IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3802 of 2004
with
SPECIAL CIVIL APPLICATION NO.3803 OF 2004

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KHODAJI MANGAJI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3802 & 3803 of 2004
MR TUSHAR MEHTA for Petitioner No. 1-2
Mr.Gori, Asst.GOVERNMENT PLEADER for Respondent No. 1-3
NOTICE SERVED for Respondent No. 1
MR RJ GOSWAMI for Respondent No. 4-5

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 21/09/2004

ORAL JUDGEMENT

With the consent of learned advocates appearint for parties, both the matters are taken up for final hearing today having common points to be considered.

2. The short facts of the case are that the proceedings came to be initiated on the basis of revenue record of village Form No.7/12 where the cultivation was shown that of the other persons than petitioners. It is the case of the petitioners that the property is neither transferred nor handed over to any one else and the petitioners are cultivating the land. It appears that the Prant Office initiated proceedings under section 72 of the Bombay Land Revenue Code (hereinafter referred to as "the Code") and notices were issued. However, as there was no reply to the show cause notice, the Prant Officer proceeded on the basis that the entries made in the Village Form 7/12 showing the name of Vardhabhai Pranlal is to be relied upon and it is proved that the land is given to Vardhabhai Pranlal for cultivation and therefore there is breach of conditions of the agreement and therefore the order was passed whereby the land is forfeited to State. The petitioners carried the matter before the State Govt by preferring revisions. Before the State Govt the petitioners reiterated the same thing, but, however, the State Govt proceeded on the basis that no reliable evidence is produced by the petitioners and therefore the order passed by the Prant Officer does not call for interference and the revision have been dismissed. It is, under these circumstances, petitioners have approached this Court by preferring these petitions.

3. A perusal of the order passed by the Prant Officer shows that the same is purported to have been passed under section 72 of the Code. So far as the SCA No.3803/04 is concerned, the impugned order passed by the Prant Officer refers to the provisions of Section 79 of the Code. The perusal of both the orders shows that it has been mentioned that the land was granted as new tenure land and therefore as land is given to Vardhabhai Pranlal for cultivation and hence there is breach of conditions and the transfer effected without permission and therefore the proceedings appear to have been initiated.

4. Section 72 of the Bombay Land Revenue Code reads as under:

"72. If an occupant who is either a Hindu, a Mohammadan, or a Buddhist dies intestate and without known heirs the Collector shall dispose of his occupancy by sale, subject to the provisions of this Act or of any other law at the time in force for the sale of forfeited occupancies in realisation of the land revenue, and the law at the time in force concerning property left by Hindus, Mohammadans or Buddhists dying intestate and without known heirs shall not deemed to apply to the said occupancy but only to the proceeds of such sale after deducting all arrears of land revenue due by the deceased to the Government and all expenses of the said sale."

5. It appears that section 79 of the Code is deleted as back as in the year 1913 by Bombay Act IV of 1913. Section 79A refers to summary eviction of persons unauthorisedly occupying the land. As such, perusal of both the orders issued by the Prant Officer shows that the power under section 79A is not invoked because they are not referred to while passing the impugned orders.

6. Even if the matter is considered on the substance of the subject matter also, the net effect would be that as there was cultivation shown in the revenue record of village Form 7/12 of the land in question, the Prant Officer proceeded on the basis that the land is transferred in breach of conditions since it was a new tenure land, and therefore, the land is ordered to be forfeited. Merely because the show cause notice has been issued and the owner of the land could not represent the case would not be a sufficient ground to hold that the land is transferred to a third party, may be for cultivation. It is well settled that the village Form 7/12 or revenue record is relevant only for fiscal purposes and merely mutation or other aspect of cultivation is recorded in revenue record, no right which otherwise exists in accordance with law gets altered qua the property in question. If there is any authenticated record in the village panchayat or with Talati-cum-Mantri showing those rights are created by the transfer by the holder of the land in favour of some other party it may stand on different footing. It appears that there was no record available for altering the rights, possession and/or ownership of the land in question before the Prant Officer. In the absence of such record, the Prant

Officer could not have come to conclusion that the land is transferred in breach of conditions. As regards the orders of the State Govt in revision are concerned, it has proceeded on the basis as if the burden is upon the owner of the land to show that he has not transferred. When a statement is made or it is the case of the petitioner that the land is not transferred and is in possession and ownership of the petitioner, it will be for the authority to consider if there is any authenticated record available for transfer. In the absence of any lawful document for transferring or creating lawful right in the property in question, it could not be even concluded that the property is transferred in breach of conditions. It may be recorded that the person who is alleged to have transferred the land namely Vardhabhai is represented through respondent Nos 4 and 5, Legal representatives of deceased Vadhabhai Pranlal. Mr.Goswami, Ld.counsel for respondent Nos 4 and 5 also confirms the position that no transfer whatsoever has taken place. It also appears that before the State Govt in the proceedings of revision the affidavit was also filed for such purpose. Further, it appears that the orders are passed by the Prant Officer simply on the basis of noting in Village Form No.7/12 of the land in question showing that the cultivation is by other person and not by petitioner and therefore the land is ordered to be forfeited to State. When it is a matter pertaining to taking away the property of any citizen mere reliance upon revenue record of village Form No.7/12 can not be said as sufficient proof for breach of condition. As such, when such aspect is denied by the holder of the property, it must be examined as to whether concerned Talati-cum-Mantri made such entry on the basis of hearsay or on the basis of so called material which can not be relied upon or on some extraneous consideration and, if yes, then such entry in village Form No.7/12 can not assume value authorising for concluding the breach and consequential forfeiture of the property. There must be cogent, authenticated and lawful material for altering the rights in immovable properties for such breach. Moreover, even if it is established that there is a breach, and if the authority is to take action of forfeiture, then it should also be examined as to whether the breach was due to circumstances beyond the control of the holder of the property and, if yes, then in that case, harsh action of forfeiture of the property would not be required but the authority will have to consider the matter for imposition of fine/penalty considering the gravity of the breach, including the period for such breach. If it is a matter resulting into action of forfeiture of land, then principles of natural justice to

its full extent considering the facts and circumstances of the case will be required to be followed. Therefore, only entry in village Form No.7/12 can not be said as sufficient material attracting the power of authority for forfeiture of the land to the State Government. Under the circumstances, it is apparent that the Prant Officer as well as the State Govt have committed apparent jurisdictional error in exercising power on the basis of the entry in village Form No.7/12 and holding that there is breach of conditions of grant of land and holding that the land deserves to be forfeited to the State Govt.

7. In view of the above, the impugned orders passed by the Prant Officer as well as by the State Govt in revision are quashed and set aside. Both the petitions are allowed to the aforesaid extent. Rule in each

petition is made absolute accordingly. Considering the facts and circumstances of the case, there shall be no order as to costs.

21.9.04 (JAYANT PATEL,J)